IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

OP.No. 19515 of 1995(W)

PETITIONERS:

1.BUILDERS ASSOCIATION OF INDIA (COCHIN CENTRE), REP. BY ITS HONARARY TREASURER P.P.MATHAI PALLATHATTA,ERG JUNCTION, COCHIN – 14.

2.MR.P.K.RAMACHANDRAN,ENGINEERING CONTRACTOR, DEEPA MANDIR, KARUVELIPADY, COCHIN – 5.

3.M/S.GEORGE MATHEW AND CHERIAN VARKEY, REP. BY MANAGING PARTNER, GEORGE MATHEW, S.A.ROAD, KOCHI-16.

4.M/S,PALLATHATTA CONSTRUCTION, REP. BY P.P.MATHAI PALLATHATTA, MANAGING PARTNER, MULANTHURUTHY P.O.

5.M/S.COASTAL FOUNDATIONS (P) LTD., REP. BY ITS DIRECTOR C.C.JOHN, PANDIT KARUPPAN ROAD, PERUMANOOR, ERNAKULAM.

6.M/S.J AND P CONSTRUCTIONS,RAVIPURAM, M.G.ROAD, PERUMANOOR, ERNAKULAM.

7.C.M.KURIAKOSE, CHALAPPURAM HOUSE, ALAPPAT CROSS ROAD,KOCHI-16.

8.N.G.PETER,CONTRACTOR,NELLICKAL HOUSE, PARRY JUNCTION, KOCHI-5.

9.M/S JAYBEE CONSTRUCTIONS,REP. BY ITS PARTNER BOANY PAUL KAPPADAKUNNEL, 16/2041, P.T.JACOB ROAD, KOCHI-5.

10.M/S.QUALITY BUILDERS,REP. BY PROPRIETORY JOSEPH MATHEW, 16/2041,P.T.JACOB ROAD, KOCHI-5.

11.M/S.SUPER CONSTRUCTIONS,M.E.S.CONTRACTORS,XVII/901,MUNDAMVELI, COCHIN-682507.

12.M/S.K.L.MANUEL & SONS,ENGINEERS AND CONTRACTORS, 18/577, PALLURUTHYNADA,COCHIN-6.

13.P.J.KOSHY, ENGINEERING CONTRACTOR, PANAMPILLY NAGAR, COCHIN-16.

14.MR.RODNEY JOSEPH FARIA, CONTRACTOR,FIELD VIEW,SOUDI, MUNDAMVELI P.O. COCHIN-682507.

15.M/S.C.T.C.CONTRACTORS,ENGINEERS AND CONTRACTORS,REP. BY JOHN JOSEPH, PALLURUTHY, COCIN-6.

16.M/S.CHERIAN & KURIAN,ENGINEERS AND CONTRACTORS,MANIKKATH HOUSE,XXVII/1257,PANAMPALLY NAGAR, COCHIN-36.

17.T.I.JOHN,ENGINEERING CONTRACTOR,THENGUMTHARAYAL,THEVARA P.O. COCHI-682 013.

18.P.C.THOMAS,RAILWAY CONTRACTOR,MAMANGALAM, EDAPALLY, COCHIN-25.

19.M/S.FEBY CONSTRUCTIONS,40/1124,2ND FLOOR,N.H.KALOOR, KOCHI-17,REP. BY MANAGING PARTNER, K.C.FRANCIS.

20.M/S.VIJAYA CONSTRUCTIONS, REP. BY PARTNER M.P.ITOOP, MYKULANGARA,KINGINIMATTOM P.O., KOLENCHERRY,ERNAKULAM DIST.

21.MR.A.P.YOHANNAN,ADDOKKATTIL HOUSE, MUZHIKKARA P.O., VIA CHOTTANIKKARA – 682 313.

22.T.J.MATHAI, CONTRACTOR, THEKKANATH HOUSE, THOUNDAYIL LANE,COCHIN-36.

23.C.G.PAUL & COMPANY,ENGINEERS BUILDERS MANUFACTURERS, REP. BY ITS MANANGING PARTNER,C.G.PAUL CHEERAMELIL MULANTHURUTHY, KOCHI-682314.

24.MR.V.K.PRABHAKARAN,GOVT.CONTRACTOR,VALIYAPARAMBIL HOUSE, EROOR P.O., TRIPUNITHURA.

25.M/S.GEO-TECH CONSTRUCTION CORPORATION, REP. BY ITS MANAGING PARTNER C.J.GOERGE, 8TH FLOOR, KSHB OFFICE, COMPLEX, PANAMPILLY NAGAR, KOCHI-16.

26.M/S.GEO-TECH FOUNDATIONS AND CONSTRUCTIONS, REP. BY ITS MANAGING PARTNER, C.J.GOERGE, DO. DO.

27.M/S.T.O.ITOOP ASSOCIATES,ENGINEERING CONTRACTOR, REP. BY ITS MANAGING PARTNER SRI.T.I.GEORGE, PACHALAM, COCHIN-12.

28.MR.K.K.THOMAS,KIZHAKEMULAKAL, ENGINEERING CONTRACTORS, R.NO.30/1035/A, KANIYAMPUZHA ROAD, VYTTILA, COCHIN-19.

29.M/S.P.M.JOSE & CO.,BUILDING CONTRACTORS, REP. BY ITS MANAGING PARTNER P.M.JOSE, PALLATHITTAYIL HOUSE, MULANTHURUTHY P.O.

30.C.K.SASANKAN,CHARANGATTU, KANICHUKULANGARA,ALAPPUZHA.

31.MR.K.R.RAVEENDRANATHAN,B.SC(ENGG.),RAILWAY CONTRACTOR, RAGHAVA BHAVANAM,KANICHUKULANGARA, CHERTHALA.

32.M/S.N.J.THOMAS & CO., DESIGNERS,ENGINEERS & CONTRACTORS, REP. BY ITS MANAGING PARTNER MR.SIBI THOMAS, OZHATHIL BUILDINGS, KOTTAYAM-1.

33.M/S.VELLAPALLYMATTATHIL CONSTRUCTIONS, ENGINEERS & CONTRACTORS, REP. BY ITS MANANGING PARTNER SRI.ALEX V. CHACKO, S.H.MOUNT P.O. KOTTAYAM 686006.

34.M.P.KURIAN M.SC.(TECH) ENGINEERS & CONTRACTORS, DOOR NO.DVN & 4/1073,KRISHNA SWAMY CROSS ROAD, KOCHIN-35.

35.M/S.C.G.JACOB & COMPANY,REP. BY SRI.C.G.JACOB, CHEERAMALEL BUILDINGS, MULANTHURUTHY P.O. COCHIN-682 315.

36.M/S.SILPI CONSTRUCTIONS,REP. BY ITS MANAGING PARTNER SRI.F.ABILIUS, AIRPORT ROAD, VALLAKADAVU P.O.

37.M/S.MURUKESH AND CO., ENGINEERING CONTRACTORS,REP. BY V.SREEDHARAN,ADICHANOLLOOR, QUILON.

38.M/S.CEEMEX,ENGINEERS AND CONTRACTORS, REP. BY ITS MANAGING PARTNER SRI.G.CHIDAMBARA KUTTALAM,T.C.24/449, THYCAUD, TRIVANDRUM – 695 014.

39.MR.B.RAMDAS,HARISREE,OPPOSITE TRIVANDRUM CLUB,VAZHUTHACAUD, TRIVANDRUM.

40.MR.V.VIJAYAN,POONILAV,PETTAH,TRIVANDRUM.

41.M/S.P.R.S.BUILDERS & M/S.P.RATNASWAMY,REP. BY ITS MANAGING PARTNER SRI.R.MURUGAN, “RAJCOT”, THYCAUD,TRIVANDRUM.

42.M/S.SOUNDARYA,BUILDERS AND ENGINEERS,REP. BY ITS MANAGING PARTNER MRS.R.PREMAKUMARI, DO. DO.

43.M/S.BHARATH BUILDERS,ENGINEERS AND CONTRACTORS,REP. BY ITS PARTNER SRI.C.KARTHIKEYAN, 31/2048, VYTTILA, KOCHI-19.

44.M/S.NOBLE TECH CONSTRUCTION P. LTD.,32/1252,REP. BY ITS MANAGING DIRECTOR, P.V.THOMAS, 32/1252, PALARIVATTOM, COCHIN-25.

45.M/S.HAPPY CONSTRUCTIONS, REP. BY ITS MANAGING PARTNER A.C.HARIDAS, HAPPY VILLA, NEAR CEPEZ, KAKKANAD, COCHIN-30.

46.M/S.SILPI CONSTRUCTION CONTRACTORS, REP. BY ITS MANAGING PARTNER, P.EDISON, 40/3120a, LISIE ROAD, KOCHI.

47.M/S.E.R.DAS & COMPANY, REP. BY MR.E.RAMDAS,5/498, SASTRI NAGAR COLONY, P.O.ERANHIPPALAM, CALICUT.

48.M/S.TAJ CONSTRUCTIONS, REP. BY MR.T.H.RHARIAN,
THALIATH HOUSE, FLORICAN HILL ROAD, MALAPARAMBA P.O.,
CALICUT.

49.M/S.MECHELCIV ENGINEERING CORPORATION, REP. BY MR.M.M.JAMAL,
"MANADATH", PUTHIYANGADI P.O., CALICUT.

50.MR.P.V.BALAKRISHNAN,GOVT.CONTRACTOR, S/O.LATE APPU,
"BHAVANA", ERANHIKKAL P.O., CALICUT.

51.MR.E.SURESH BABU, S/O.E.KUTTAPPAN,27/343, S.K.PATTAKKADU ROAD,
PUTHIYARA P.O., CALICUT.

52.MR.K.T.KUNHADU HAJI, S/O.LATE MOHAMMED REMLA, MANZI,
ARAKKINAR P.O., CALICUT-28.

53.M/S.CHEMBAKASSERRY BUILDERS & CHEMBAKASSERY CONSTRUCTIONS
& AGENCIES, REP. BY MR.P.ZAKEER, M.M.ALI ROAD, CALICUT.

54.M/S.KAITHAKKARY CONSTRUCTIONS, REP. BY MR.CHERIAN MATHEW
KAITHAKKARY, 2666/A, CHULLIDDU ROAD, CIVIL STATION P.O., CALICUT-28.

55.MR.TOM JOSEPH,S/O.LATE P.M.JOSEPH, M 7/8.KSHB COLONY,
MALAPPARAMBA P.O., CALICUT.

56.MR.V.C.ELIAS,CONTRACTOR,KILIMANGALAM P.O.,
WADAKKANCHERRY, TRICHUR DT.KERALA.

57.K.V.JOSEPH & SONS,CONTRACTORS,REP. BY MANAGING PARTNER
K.J.KURIAKOSE, KOCHI-24.

58.M/S.HELEN ALUMINIUM COMPLEX, REP. BY MR.I.T.JOHNY, KALAVATH
ROAD, PALARIVATTOM, COCHIN-25.

59.MR.T.B.HASHIM,KHADEEJA MANZIL, THOTTUMUGHOM, ALWAYE-683 105.

60.M/S.ECONOMIC BUILDERS,REP. BY MR.C.A.MOHAMMED,
BETHANI ROAD, ALUVA.

61.M/S.LLOYD INSULTATIONS (INDIA) LIMITED, REP. BY MR.T.V.GEORGE,
33/1536-1, UNION BANK BUILDING, THAMMANAM P.O., COCHIN-682 032.

62.M.J.ISSAC & CO., ROSE COTTAGE, ULLALA, THALAYAZHAM P.O, VAIKOM.

BY ADV. SRI.R.RAMADAS
SRI.T.R.G.WARRIER(SR.)

RESPONDENTS:

1.THE STATE OF KERALA, REP. BY CHIEF SECRETARY TO GOVT.,
SECRETARIAT, TRIVANDRUM.

2.BOARD OF REVENUE, REP. BY SECRETARY (TAXES), TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.P.A.SALIM
SRI.V.V.ASOKAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE KERALA GENERAL SALES TAX ACT 11 OF 1995.

EXT.P2: COPY OF THE TABLE SHOWING THE PERCENTAGE OF THE LABOUR COMPETENT FORMING PART OF THE CONSTRUCTION CHARGES OF A BUILDING.

J.B.KOSHY & K.PADMANABHAN NAIR, JJ.

O.P.NO.19515 OF 1995 (W)

Dated this the 18th day of December, 2006

J U D G M E N T

KOSHY,J.

This writ petition is filed challenging the validity of the Kerala General Sales Tax (amendment) Act 1995 (Act 11 of 1995). Major contention is with regard to the Act 11 of 1995. Act 11 of 1995 was passed to clear the validity of the earlier assessment. State legislature has got competence to make a law in respect of subject and incidental matters thereto under various entries provided in List II of Schedule VII of the Constitution. Under Entry 54 of List II "Taxes on sale or purchase of goods other than news papers subject to the provisions of Entry 92A of List IX". Entry 54 of List II of the VIIth Schedule prescribes the field of legislation. By the impugned provision, the State Government got permission to assess or collect tax on transfer of goods involved in the execution of a works contract. The above provision is not against the decision

of the Apex Court in **Gannon Dunkerley and Company v. State of Rajasthan (88 STC 204) and Builders Association of India v. State of Karnataka (88 STC 248)**. The present provisions were enacted after remanding the defence provisions in Rule 8(4) of the Kerala General Sales Tax Rules 1963 as it stood prior to the amendment made on 19.1.1991. As held by the Supreme Court in **Indian Aluminium Co. etc. v. State of Kerala and others (A.I.R. 1996 S.C. 1431)** and **Commissioner of Trade Tax, U.P. v. Upper Doab Sugar Mills Ltd. (2000 (3) S.C.C. 676)** such legislation are not involved merely because earlier assessment are being revalued. The challenge against the impugned provision on the ground that it was incompetent to introduce such a provision with retrospective effect is bad, is as not tenable in law. If the State legislature has got authority to make law prospectively, it can as well make law with retrospective effect. It is submitted that under Section 64(A) they can get the amount from the Government. Nobody has challenged the validity of Section 64(A). Hence petitioners can raise the claim under Section 64(A), if they are legally entitled.

It is for the petitioners to claim the benefit and contest the matter. With the above observations this writ petition is dismissed.

J.B.KOSHY, JUDGE

K.PADMANABHAN NAIR, JUDGE

prp

J.B.KOSHY & K.PADMANABHAN NAIR, JJ.

O.P.NO. OF 2006 ()

J U D G M E N T

17th November, 2006